

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

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| DOUGLAS N. PEARSON, et al. | : | CIVIL ACTION |
| | : | NO. 99-4104 |
| Plaintiffs, | : | |
| | : | |
| v. | : | |
| | : | |
| EXIDE CORPORATION, et al., | : | |
| | : | |
| Defendants. | : | |

MEMORANDUM and ORDER

AND NOW, this 18th day of January, 2002, it is hereby **ORDERED** that defendant's Motion for Entry of Final Judgment (doc. no. 98) is **DENIED**. The court's order is based on the following reasoning.

On April 19, 2001, this court granted plaintiffs' partial motions for summary judgment against defendants ("Exide") regarding the advancement of litigation expenses from Exide to plaintiffs. See Pearson v. Exide, 157 F. Supp. 2d 429 (E.D. Pa. 2001) (doc. no. 80). On May 11, 2001, the court denied Exide's motion for reconsideration of the April 19, 2001 decision. See Doc. No. 88. In its motion for entry of final judgment, Exide argues that these orders constitute a final judgment which dispose of all of plaintiffs' advancement claims and seeks the entry of final judgment on these claims pursuant to Federal Rule of Civil Procedure 54(b).

Rule 54(b) is designed to remedy the harsh effects that

sometimes result from a delayed appeal in litigation presenting multiple claims or multiple parties. Waldorf v. Shuta, 142 F.3d 601, 610 (3d Cir. 1998). The rule provides, in pertinent part:

When more than one claim for relief is presented in an action, . . . the court may direct the entry of a final judgment as to one or more but fewer than all of the claims . . . only upon an express determination that there is no just reason for delay and upon an express direction for the entry of judgment.

Fed. R. Civ. Proc. 54(b). If such an order is properly entered, the certified judgment may be appealed to the Court of Appeals, subject to the scrutiny of the Rule 54(b) determination. Sussex Drug Prods. V. Kanasco, Ltd., 920 F.2d 1150, 1153 (3d Cir. 1990). When determining whether Rule 54(b) certification is appropriate, the district court is presented with a two-pronged inquiry: (1) is the court's order a final judgement on an individual claim, and (2) if so, the court must exercise its discretion to determine "whether there is any just reason for delay." Curtiss-Wright Corp. v. General Electric Co., 446 U.S. 1, 7-8 (1980).¹ The burden is on the party seeking final certification under Rule 549b) "to convince the district court that the case is the 'infrequent harsh case' meriting a favorable exercise of discretion." Anthuis v. Colt Industries Operating Corp., 971

¹ In the Third Circuit, district courts are required to provide a reasoned opinion as a prerequisite for appellate review of a judgment certified as final. Cemar, Inc. v. Nissan Motor Corp., 817 F.2d 120, 123 (3d Cir. 1990).

F.2d 999, 1003 (3d Cir. 1992) (quoting Allis-Chalmers Corp. v. Philadelphia Elec. Co., 521 F.2d 360, 365 (3d Cir. 1975)).

As to the first prong, a final judgment is "an ultimate disposition of an individual claim entered in the court of a multiple claims action." Sear, Roebuck & Co. v. Mackay, 351 U.S. 427, 436 (1956). A final judgment must meet the requirements of 28 U.S.C. § 1291, "which are generally described as ending 'the litigation on the merits and leav[ing] nothing for the courts to do but execute the judgment.'" Sussex Drug Prods., 920 F.2d at 1154 (quoting Gulfstream Aerospace Corp. v. Mayacamas Corp., 485 U.S. 271, 275 (1988)). A partial adjudication of a single claim lacks the finality prerequisite to the right of appeal. Marino v. Nevitt, 311 F.2d 406, 408 (3d Cir. 1963). "A decision which fixes liability but not damages is not appealable, despite the entry of an order under Rule 54(b)." Kaszuk v. Bakery and Confectionery Union and Industry International Pension Fund, 791 F.2d 548, 553 (7th Cir. 1986) (citing Liberty Mutual Insurance Co. v. Wetzel, 424 U.S. 737 (1976)). "There is no material difference between an order that leaves all damages issues open (as in Liberty Mutual) and an order that leaves one, important damages issue open (this case). In either event the order is not a final disposition of a claim and does not meet the standards of Rule 54(b)." Id. (holding that an order finding that plaintiff was entitled to benefits but did not dispose of her request for

prejudgment interest was not a final appealable order pursuant to Rule 54(b)).

Any order where the damages are not fixed or which leaves additional damages issues open for further adjudication is not final pursuant to Rule 54(b).² For example, in International Controls Corp. v. Vesco, 535 F.2d 742 (2nd Cir. 1976), the district court entered a judgment for specified damages but left open the possibility that the plaintiff might be able to prove further damages in subsequent proceedings. Id. at 744. The court held that the judgment was not final because "for final judgment to be entered on any one claim, all damages stemming from that claim must be fixed." Id. at 748. "In short, a judgment cannot be considered final as long as it leaves open the

² Pension Fund v. Central Transport, Inc., 935 F.2d 114 (7th Cir. 1991) is distinguishable. Pension Fund involved a pension dispute where the employer and the fund did not agree on the employer's obligations. In such a case, federal statute provides that they must arbitrate the dispute. Additionally, while the arbitration proceeds, the employer must either pay the entire pension obligation or make periodic payments in an amount determined by the trustees. Id. at 116. The district court entered an order compelling defendants to pay its accrued liability and to make future payments as they came due. The Seventh Circuit held this order final and appealable despite the forward-looking nature of the order. Id. The court explained: "interim payments are the dispute; the court is deciding who holds the stakes during the interim, not what the final tally shall be; the arbitrator's award will not affect one way or the other the only subject of this litigation." Therefore, Pension Fund is distinguishable from the current case in that, here, the issue of advancement of expenses is not an interim issue. Rather, it is final issue of liability mixed with non-final issues of damages.

question of additional damages. The essence of a final judgment is that it leaves for the court nothing to do but order execution." Id. See also United States v. Burnett, 262 F.2d 55, 59 (9th Cir. 1958) (a judgment finding defendant liable and awarding compensatory damages not final where the issue of damages as to future disability was reserved for a later decision). Similarly, in a breach of contract action, when an award of attorney fees is based on a contractual provision and is "an integral part of the contractual relief sought, the order does not become final and appealable until the attorney fees are quantified." Gleason v. Norwest Mortgage, Inc., 243 F.3d 130, 137 (3d Cir. 2001) (where contract provided obligation to pay attorney fees to "prevailing party in whose favor judgment is entered," the issue of which party prevailed in the litigation on the merits is collateral to the substantive issue on appeal and does not prevent judgment on the merits from being final).

Similarly, the relevant orders in this case simply state that Exide is responsible to advance plaintiffs' litigation expenses. Although some of the invoices for these expenses have been submitted and paid, there are many invoices to be submitted to Exide for advancement for the services in the pending cases involving plaintiffs in which Exide was held responsible for advancement of expenses. As such, since the orders have not fully determined the amounts to be advanced to plaintiffs, the

claim for advancement has not been "finally" adjudicated.

Furthermore, as plaintiff suggests, this case does not present a situation where a formula has been articulated by the court that may be mechanically applied to determine which expenses are reasonable. Over the nine months which have passed since the April 2001 order, Exide has objected to many of the invoices submitted by plaintiffs. Disputes as to the invoices have arisen and continue to arise requiring the court to become involved in these disputes. In fact, the court has already issued one order in June 2001 resolving some of these disputes. See Pearson v. Exide, No. Civ.A. 99-4104, 2001 WL 872452 (E.D. Pa. June 14, 2001) (doc. no. 103) and an Emergency Motion to Enforce Orders Requiring Advancement of Litigation Expenses (doc. no. 112) is currently pending.

Each of these disputes presents a potential issue which could be subject to appeal. The purpose of the final judgment rule is to "reduce[] the ability to harass opponents and to clog the courts through a succession of costly and time-consuming appeals. It is crucial to the efficient administration of justice." Flanagan v. United States, 465 U.S. 259, 264 (1984). Thus, the court's ruling on plaintiffs' entitlement to advancement of litigation expenses cannot be considered final until the total advancement to which plaintiffs' are entitled is quantified by the court.

Even if this court were to find that the court's April 2001 order finding defendants liable for advancement of plaintiff's litigation expenses, certification may still be inappropriate under the discretionary prong of Rule 54(b). The second prong of the Rule 54(b) analysis is for the court to exercise its discretion to determine "whether there is any just reason for delay." GE Capital Mortgage Services Inc. v. Pinnacle Mortgage Investment Corp., 897 F. Supp. 854, 873 (E.D. Pa. 1995) (quoting Curtiss-Wright Corp. v. General Electric Co., 446 U.S. 1, 8 (1980)). In considering whether there is any just reason to delay the entry of judgment, the court "must take into account judicial administrative interests as well as the equities involved." Id. (quoting Curtiss-Wright, 446 U.S. at 7). All or some of the following factors may bear on the propriety of certification of a judgment as final under Rule 54(b): (1) the relationship among the adjudicated claims; (2) possibility that the need for review might be mooted by future developments in the district court; (3) possibility that the reviewing court might be obliged to consider the same issue a second time; (4) presence or absence of a claim or counterclaim which could result in set-off against the judgment sought to be made final; and (5) delay, economic and solvency considerations, shortening the time of trial, frivolity of competing claim, etc. Allis-Chalmers, 521 F.2d at 365.

Exide argues that there is no just reason to delay the entry of final judgment because none of the other claims in this case could reduce the advancement award. The advancement claim has been separated from the plaintiffs' other claims by virtue of the court's October 12, 2000 stay of all claims except advancement, and any subsequent trial between the parties will not concern the issue of advancement. Defendants also argue that it would be inequitable to delay an appeal. If the entry of final judgment is delayed, Exide argues that it will be called upon to advance millions of dollars to assist in plaintiffs' prosecution of claims against Exide and in their defense against criminal charges by the United States government and it should not be required to advance millions of dollars while waiting for a definitive ruling on the propriety of advancement.

However, even though the advancement claims have been placed on a separate litigation track, they are not completely distinct from plaintiffs' remaining claims. Plaintiffs' have asserted claims for indemnification against Exide. In the event that it is ultimately determined that plaintiffs are entitled to indemnification, the correctness of the court's decision that plaintiffs are entitled to advancement becomes moot.

Furthermore, Exide has not shown that this is the "infrequent harsh case" meriting certification. Exide is merely being held to the promise that it extended to its officers when

they were hired and which is stated in its bylaws to advance litigation expenses, conditioned solely on the executive's promise to repay. There is no undue burden to require Exide to abide by that promise.

Thus, Exide's motion for entry of final judgment will be denied.

AND IT IS SO ORDERED.

EDUARDO C. ROBRENO J.